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7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA, ) 3:14-CR-00066-MMD-WGC

10 Plaintiff, )

11 NICHOLAS PONH SUON, )

12 Defendant. )

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COMES NOW, the Defendant, NICHOLAS PONH SUON (hereinafter "Defendant" or  
"Mr. Suon") by and through his attorney of record MICHAEL L. BECKER, ESQ., and hereby  
submits this Memorandum setting forth factors that this Court should consider in determining an  
appropriate sentence.

As set forth in the sections that follow, Mr. Suon respectfully requests that this Court  
fashion a sentence that is "sufficient but not greater than necessary" to comply with the goals of  
sentencing set forth in 18 U.S.C. §3553(a)(2).

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1     **I.     OVERVIEW OF THE CASE**

2         The Defendant stands convicted of one count of Enticement of a Minor to Engage in  
3         Illegal Sexual Activity in violation of 18 U.S.C. §2422(b) after having entered a guilty plea.  
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5         Sentencing is currently scheduled for June 8, 2015 at 9AM before this Honorable Court.  
6

7     **II.    STATEMENT OF FACTS**

8         The defense concurs with "The Offense Conduct" set forth in the *Presentence*  
9         *Investigative Report*. Mr. Suon insists, however, that he initially met the juvenile female herein  
10        in adult chatrooms and thereafter communicated with her on Internet chat applications that  
11        required the subscriber to affirm that they are at least 18 years old. Mr. Suon was not initially  
12        seeking to develop a relationship with a minor and a substantial period of time transpired before  
13        he knew or should have known that he was unwittingly communicating with a minor.  
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15         Mr. Suon did wish to make additional points and forwarded an "Addendum to  
16        Presentence Investigative Report" to U.S. Probation on June 1, 2015 (Attached as Exhibit "A"),  
17        which was not reflected in the PSR.  
18

19     **III.    RECOMMENDATIONS OF THE PSR AND GOVERNMENT**

20         The penalty for Enticement of a Minor to Engage in Illegal Sexual Activity, a Class A  
21         Felony, in violation of Title 18 U.S.C. §2422(b) is 10 years to life imprisonment, a fine of up to  
22         \$250,000 and at least 5 years to lifetime supervised release.  
23

24         To the extent that the PSR recommends a total offense level of 29 and a criminal history  
25         category of 1 with a guideline imprisonment range of 87 to 108 months (*See* PSR p. 11, ¶ 63),  
26         the defense joins the request of U.S. Probation and the Government to impose the mandatory  
27         minimum sentence of ten years as required by statute.  
28

1     **IV. ARGUMENT RE: LENGTH OF SUPERVISED RELEASE**

2       U.S.S.G. §5D1.1 and §5D1.2, in conjunction with 18 U.S.C. 3583(k), set forth relevant  
3 factors for the Court's consideration of the appropriate length of supervised release following  
4 completion of sentence. A minimum period of five years supervised release is required under the  
5 statute.

6       The defense asks this Court to consider unique factors under 18 U.S.C. §3553(a), which  
7 require courts to, "impose a sentence sufficient, but not greater than necessary, to comply with  
8 the purposes set forth in paragraph 2."

9       18 U.S.C. §3553(a)(2) defines such purposes as:

10           (A) to reflect the seriousness of the offense, to promote respect for the law, and to  
11 provide just punishment for the offense;

12           (B) to afford adequate deterrence to criminal conduct;

13           (C) to protect the public from further crimes of the defendant; and

14           (D) to provide the defendant with needed educational or vocational training, medical  
15 care, or other correctional treatment in the most effective manner.

16       In determining the minimally sufficient sentence, 18 U.S.C. §3553(a) further directs  
17 sentencing courts to consider the following factors (among others):

- 18           1) the nature and circumstances of the offense and the history and characteristics  
19              of the defendant;  
20           2) the kinds of sentences available;  
21           3) the need to avoid unwarranted sentence disparities among defendants with  
22              similar records who have been found guilty of similar conduct.

18 U.S.C. §3583(c) also asks the Court to consider the need to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

U.S.S.G. §5D1.1(B) suggests the “court should give particular consideration to the defendant’s criminal history...the more serious the defendant’s history, the greater the need for supervised release.” Here, defendant has no criminal history.

Although the U.S.S.G. policy statement under §5KD1.2 generally recommends the maximum term of supervised release after the commission of a sexual offense, the defense asks this Court to consider Mr. Suon's unique circumstances in light of the character letters submitted on his behalf (attached as Exhibit B), and the fact that his time of incarceration will be substantially higher than the Guidelines recommend notwithstanding the mandatory minimum, and requests this Court to impose a supervised release period of 5 years.

## **V. CONCLUSION**

In light of the statutory factors and arguments above, the Defendant NICHOLAS PONH  
SUON asks this Court to impose the mandatory minimum sentence of ten years followed by a  
five year period of supervised release to follow thereafter.

DATED this 4th day of June, 2015.

/s/ Michael L. Becker

**MICHAEL L. BECKER, ESQ.**  
Nevada Bar Number: 8765  
Attorneys for NICHOLAS PONH SUON

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# EXHIBIT “A”

United States District Court  
District of Nevada  
Probation Office

May 1, 2015

POSITION OF THE PARTIES  
WITH RESPECT TO THE SENTENCING FACTORS

RE: Nicholas Ponh Suon

CASE NO. 3:14CR00066

It is the responsibility of the probation officer to endeavor to resolve any disputed issues raised by the parties. It is our burden to submit an addendum setting forth any objections counsel may have made together with the probation officer's comment thereon. Please select and complete one of the following options and return this form to Senior United States Probation Officer, Daniel H. McCaw to arrive no later than the close of business on June 1, 2015. Your signature on this document does not preclude you, for good cause, from making a new objection at any time before sentence is imposed, pursuant to Rule 32(2)(i)(D).

I. No written objection(s) is(are) being made to the material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

Print Name \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

II. No written objection(s) to the material information, sentencing classification, sentencing guideline ranges, and policy statements contained in or omitted from the report is(are) being submitted. However, we do wish to make the following points which are attached for the record.

Print Name \_\_\_\_\_

Signature: \_\_\_\_\_ Date: 5/29/15

III. The attached objection(s) is(are) being made to the material information, sentencing classifications, sentencing guideline ranges, and/or policy statements contained in or omitted from the report.

Print Name \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This form will be provided to the court at the time the Presentence Report is disclosed.

**SUON, NICHOLAS ADV. USA, 3:14CR000-66-001**

***ADDENDUM TO PRESENTENCE INVESTIGATION REPORT***

Defendant Suon requests the following additions:

50. Mr. Suon has continued sinus and nasal congestion related issues. He has numerous food allergies. He has vision problems including blurriness related to the assault against him by the father of the victim herein on the day of his arrest. He has dental problems including lose teeth due to loss of bone in the jaw. He is experiencing frequent severe headaches. He has unexplained lumps in his legs and arms.

51. Mr. Suon is experiencing mental problems relating to his ability to absorb and relay events. He is having difficulty with concentration and reading comprehension. He feels that his problems may relate back to work related exposure to chemicals while he worked at American Suzuki from 2000 to 2007.

56. Mr. Suon was unemployed from 2008 to 2014.

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# EXHIBIT “B”

The Honorable Judge Miranda Du  
United States District Court  
400 S. Virginia St.  
Reno, NV 89501

Dear Honorable Judge Miranda Du:

My name is Muni Suon, and I am the oldest sister in a family of eight. My brother and I came to the United States when we were very young. We came to the United States to escape from the Khmer Rouge regime, the civil war that almost completely destroyed my family's life. The civil war took the life of our youngest baby sister who at the time was a few months old. I remember my brother and I struggled so much through the hardship, and how we managed to take care of each other to stand on our two feet.

Nick Suon, as the oldest brother, in our culture, represents a father figure to the younger siblings. Growing up with so many siblings you can imagine our parents' challenges to raise a household full of young children, but my brother did a good job shielding our parents from our growing 'pains'. We look up to our brother. He won many arts award in school. We were so proud of him. At a very young age, Nick showed talents for repairing gadgets and he assisted many of his friends when they come over our house with their broken equipment.

Nick also worked when he was in High School to assist the family financially. We grew up very poor, so our mom often times sew our clothes for school, otherwise our clothes come from generous donation. Nick loves our mom very much. Friends and our mom often teased him about why he is a single guy because he is incredibly good looking, intelligent and has such a kind heart. But his replies was always that he didn't have time. His focus was on the family.

When our parents passed away in 2003, we were all at a lost. They were our pillars. We were under their wings and now the wings are taken away and we all separated, finding our separate homes. Nick did not seem the same. He became more and more depressed. We did not know what to do. We were used to him taking care of us, not us taking care of him.

Nick found love and married a beautiful woman, have a beautiful daughter named Alina, whom he loves so much. His daughter is his life. It seems he sees a reason for living again. He went back to school and got a good job. Things were looking good for Nick. As a new father with no one to give him advise on how to care for a new born infant, Nick's incredible instinct took care of his daughter who has grown up to be healthy and happy and smart.

I beg your Honorable Judge Miranda Du to find it in your heart to bring my brother home. He would be beneficial to be with his family than to be isolated by himself. We miss him and we love him dearly. He is all the family I have left. Alina needs a father and a mother as she is growing up. My brother is a wonderful person with a kind heart and a gentle spirit. He looked out after the family when our parent passed away. He is always there to offer support for the family making sure everyone is alright. He does not harm or hurt anyone in the society; he is a loving person and has a lot of good qualities to offer.

Respectfully Yours,

Muni Suon

The Honorable Judge Miranda Du  
United States District Court  
400 S. Virginia St.  
Reno, NV 89501

Dear Honorable Judge Miranda Du:

My name is Sara Vong. I am Nick's wife. We got married in October of 2004. We have a beautiful five year old daughter, Alina. The beginning of our marriage was wonderful. He gives me love more than I've ever seen. We had so many dreams and so many plans about our future. One of which was to have a beautiful daughter. But like other marriages, we have our ups and downs. Especially towards the last couple of years, we became stubborn in our own ways and waited for the other to reconcile first and slowly drifted apart. I don't recall any particular reason why we were angry at each other, but I regret our fights and our silence broke our communication and our marriage.

I often cry myself to sleep at night. Sometimes I think this is all a nightmare. My husband is a good man and foremost a good father to our daughter. He always makes sure our safety comes first. He is the foundation for Alina and I. He is kind, and loving and would not hurt any one. I've seen how he interacts with his family. I've seen how he cares for others. But most of all, I see a grand of love he has for our daughter.

I love my husband and we miss him very much. I cried, when she one day said, "Everyone has a dad except for me." My heart melts and I know my husband's heart is in greater pain not being able to speak, to see and to hold his daughter.

I pray to God everyday to have my husband and the father of Alina home so we can be a family again. I plead for your mercy. I hope your Honorable Judge Miranda Du have mercy on my daughter and me that we are able to become a family again. We have lost so much time.

Your Honor, my husband has no prior criminal record. He lived by the rule all his life. We are both immigrants from a civil war country. I know my husband would not intentionally hurt anyone. I know my husband to have a good heart and has always worked hard all his life. But sometimes, a person is blind sided and uses wrong judgement. Letter by letter and word by word of the law, my husband is charged with a crime, but I know as a whole person my husband is a good man and would not intentionally do something to hurt anyone. The man I know my husband to be is a good, law abiding citizen. This incident is very unlike of my husband's character as I have known it for years.

I respectfully plead mercy of the Court when my husband is sentenced. I pray that Your Honor will take into consideration all of the good that my husband has accomplished in his life; as well as all that he can give back to society if given a second chance.

I would like to thank you so much for reading all of the family letters, Your Honor.

Respectfully Yours,

Sara Vong

The Honorable Judge Miranda Du  
United States District Court  
400 S. Virginia St.  
Reno, NV 89501

Dear Honorable Judge Miranda Du:

My name is Tyla Suon, Nick's second oldest sister. Nick and I were born in Cambodia. We are children of the Cambodian Civil War. Our lives were of childhood struggles and hardship, but through our parents' love, endurances and through many refugee shelters along the way we finally made it to America.

Nick and I are one and a half years apart, so we were put in the same child labor camp during the civil war. Although, I was the older sister, Nick taught me how to survive and protected me from harm. At a very tender age himself, he taught me to be brave in a harsh environment by showing me how to get food to eat in the village guarded by young soldiers without being killed. I remember that if I stay close and follow my brother around I can be safe in the child labor camp.

Nick's love for his family and friends is unconditional. Friends that he keeps in contact with are people he met since elementary school. Nick is a loyal and a reliable person that anyone who knows him are guaranteed to want to know him for the rest of their lives. For example, Nick is a talented car mechanic. He offers his friends and family car repairs at any time if they need it. He would spend endless hours in the garage repairing their cars. It is one of his professional passion as he had worked for Suzuki auto factory for many years during his college years.

I remember my freshmen year in college, it was midnight, I drove home late from studying in the college library and I hit a curb and flattened my tire. I was so terrified being alone on the quiet street in Long Beach. The first person I knew would come to help me was my brother. I called explaining what happened and minutes later, he came fixing my car. There was no interrogation question. He just fixed my tire. There are many situations like this that I can recall where I could rely on Nick to come help me when I needed help. My brother's unselfish love for me and for others is so emotionally powerful to me that if I could I would in a minute take his place without thinking about any consequences, because that is the type of person Nick is. He leaps to help others when they ask for help. He is the type who would walk through fire to save a life.

In March and May of 2003, we lost both of our parents to liver cancer. Our parents raised six children in Long Beach. When our parents deceased, our youngest sister was still in High School. We have no relatives in the United States. There are only six

of us children and our two parents. Nick loves our mother very much. Through all of his young adult life he always put our Mom's well being before himself. For instance, if our mom was sick he would cancel his class schedule and he assures us that our mom is his priority. Every mother's day we turn to Nick to plan something special for our mom because we knew his plans is the better one.

When our parents passed away, all of us grieved differently. Some of us cried all day and all night and others were in so much shock and went into depression for a while. I think, it was particularly difficult for Nick. He went into solitude and I could see that his life was empty.

I was happy when I learned Nick was returning to college to continue to pursue his love for car profession and trying to put his life back on track. I could see the smile on his face again with the birth of his beautiful daughter. Sara, his wife, told me that having a child is so easy with Nick. It is Nick who gets up in the middle of the night to feed and to care for their daughter when she has a fever. It is Nick who imposes strict discipline in their daughter's life. Nick told me that every breath he takes and his eye sight are a token reminder of hope and excitement to see his daughter's laugh and smile.

My brother is a good person. He has no prior criminal record. He is supportive and kind in more ways than I can mention here. He is honest, sincere, hardworking and dependable. He is unselfish with his time and attention to his friends and family. He is also very humble and never boastful. Whenever we learn he completes something successfully, we congratulate him and he would shyly smile with such sweetness and he would give the credit to someone or something else.

Your Honor, I am aware of the crime my brother is charged with. I know that what my brother did was wrong. My brother had an incredible lapse of judgement which was entirely out of character. He is very shameful to put the only family he has in the country into this situation. Growing up in a tight-knit family, Nick was always the mediator, a giver and a role model for us siblings.

Your Honor, ten years is a long time as punishment as my brother has a five year old daughter who needs a father as she is growing up. I implore with Your Honor that you take this into consideration. I do not ask that my brother's actions be excused, but in the sense that he is placed in a correction facility and that his sentence is reduced to be able to help raise his daughter. It is with a sister's heartfelt sincerity and love for my brother that I plead with Your Honor to consider the lesser sentence.

Respectfully Yours,

Tyla Suon

The Honorable Judge Miranda Du  
United States District Court  
400 S. Virginia St.  
Reno, NV 89501

To The Honorable Judge Miranda Du,

Hello, my name is Sewell Suon and I'm Nicholas's youngest brother. I would like to first thank you for taking the time to read this letter. My brother, Nick, is a wonderful, kind and loving person. He has always been there when I needed help, especially when it came to mechanical issues. He is very knowledgable about cars and any electrical issues. He was the one who taught me how to change oil in my car, change and rotate my tires and brakes. He would also do the majority of my car maintenance knowing I couldn't afford to go to the dealer. My brother has always been there for me, always making time to help me even with my crazy work schedule. It was during those times, I really got a chance to bond one on one with my brother. After those tasks were completed we would go out and have lunch and talk. This was the most I have ever heard my brother talk openly on a personal level. He would talk about going to school and trying to better himself. He would talk about trying to open a business so he could make more money to support his family. He has so many ideas and big dreams. I have always admired my brother growing up. He was very creative and artistic. I remember he would take apart little things like toy fans and such and using those parts to create other things. For instance, using the motor from a toy fan he would add popsicle sticks to the end and create a propeller and attached that to a cardboard box with balloons on the side. He had made a little boat. We would fill the bathtub with water and watch it go. He was also a talented artist. I remember his drawings he did for school and how he won prizes for his artwork. I was very jealous of how well he can draw. I even asked him to draw some things for me for school because I wanted my work to be perfect.

Being a family of eight, was very hard for our parents, financially. I remember my brother working at Taco Bell after high school. My mother and I and my younger sister would wait outside in the parking lot late at night to pick him up. He would always have food for us when he was off. He was always working.

Nick wasn't only just a great brother but a loving father to his daughter, Alina. I know he loves his daughter very much. Every time we go out to eat he would make sure he brought food home for his daughter. When I see them together, how they have their own little bond, warms my heart. My brother was not the affectionate showing type of guy, until his daughter was born. He would always make sure Alina's hand was washed after going out so she won't get sick and he made sure whoever is around her washes their hands as well. He would give his daughter the world if he could. Alina misses her daddy very much. Her mom would tell me she's sad every night because she doesn't know

where her father is. It's a horrible thing not to have her father be there for her at such a young age. It's sad and heart breaking when a family is separated from one another. Overall, I love my brother with all my heart. I know he isn't perfect but I do know him and he is a wonderful, kind and quiet person. Please have mercy on my brother. I know he's not that type of person. I know everyone makes mistakes in their lives and have to live with the consequences but please give my brother a second chance at life. He has so much to offer and potential to do well and succeed. He is a sweet and gentle human being.

I know deep in my heart he means no harm. Please give my brother a second chance to contribute to society and I know he will be an asset to the community.

Thank You,

Sewell Suon

To: The Honorable Judge Miranda Du  
United States District Court  
400 S. Virginia St.  
Reno, NV 89501

Dear Honorable Judge Miranda Du,

I am Nick's youngest sister, Laura Suon. I would like to share with you about a great person who has helped raised me and who has instilled with me many fond memories. His genuine older brotherly love lives in me and I pass down that love to raising my son.

Growing up in a family of six children and two parents who constantly worked hard and endlessly, we rarely had much recreational family time, let alone have time to take a trip to the park for a family barbecue. Whenever possible, my brother would take the time from his busy weekends to take his younger siblings out for a night of golf, games, and dinner. That wasn't something he had to do, especially as a college student with barely any funds, but he made it a priority to give us some family time, and because of that, this was one of the best childhood memories I have. It was also rare to celebrate birthdays and holidays in our home. We weren't the type of family you'd see with a Christmas tree, or celebrating a birthday. One Christmas, I saw my brother come home and surprised me with a huge three foot teddy bear (the same size as I was at the time) and it really made me feel special, that out of all his siblings he would do something sweet like that for me. Although, we are much older now and have moved into our own homes and have our own children, he still makes time to do quality activities as a family. Although I am now a parent to a young boy, he still treats me like his baby sister.

Whenever I have issues with my car or in need of home repairs, my brother is the first I would call, and without hesitation, he would instantly take the time out of his day to help me. Never does he expect anything in return, and even if I'd try to repay him with money, he would never allow me to. With backaches and pains, I'm sure there are times he may not be able to work on my car, and yet he still takes the time to repair it for me, because I believe, he doesn't want me to pay more at a dealership or be in situation to get "ripped off" by a mechanic being a young woman. There isn't any one else in this world, I would trust more than my brother in a situation like this. He continues to be a 'parent' to his younger siblings.

Ever since Nick became a father, I've never seen him love someone so much as he does with his daughter, Alina Suon. It breaks my heart to see their bond grow distant as his daughter is not able to hug and kiss her father whom she madly adores. Seeing their relationship when they were together is a beautiful thing. He is the type of father that doesn't necessarily have to spoil his child with materialistic things, but embrace her with love and attention that a child truly needs. He'd take her out to eat whatever she was craving and make sure she eats until she is full before he starts eating. Nick would take Alina to the Japanese Garden because that is one of her favorite places to visit. He would hug her as she feeds the koi fish in the pond. He wasn't the type of father who would shower her with electronics or toys, but actually conversed with her on their time

together. My point on sharing this with you, is in hopes that you can see what I see in my brother. How important family is to him and see a bit of the kind of brother, and man he really is.

I would gladly vouch that my brother, Nicholas Ponh Suon, is a good person. He poses no threat in society or any being. He has no criminal record. I believe as humans, we are bound to make mistakes, and I know Nick is the kind of person who learns from them. I believe this has been a major eye opener that has completely changed my brother to see the great things in life that he is blessed with. I plead that you grant mercy on my brother and hopefully you can see that he really is a kind and good person as I see him.

Respectfully Yours,

Laura Suon

1                   **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY THAT a copy of this foregoing DEFENDANT SUON'S SENTENCING  
3 MEMORANDUM was served, via CM/ECF, upon the following persons on the 4<sup>th</sup> day of June,  
4 2015, as follows:

5                   Counsel for Plaintiff USA:

6                   Carla Higginbotham, Esq. AUSA

7                   carla.higginbotham@usdoj.gov

8                     
9                   An Employee of Las Vegas Defense Group